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May 20, 2009

Thomas S. Burack, Chairman
New Hampshire Energy Facility Site Evaluation Committee
New Hampshire Department of Environmental Services
29 Hazen Drive
Concord, NH 03301

Re: **Merrimack Station Electric Generating Facility**
SEC Docket No. 2009-01

We write on behalf of Public Service Company of New Hampshire (PSNH) in regard to the May 15, 2009 letter to you from Douglas Patch, Esq. In that letter the Moving Parties in the above-referenced matter expressed the view that they are not obligated to pay the fees of the Committee's legal counsel and, moreover, suggested PSNH should be responsible for those fees. We strongly disagree.

At the hearing held in this matter on May 8, 2009, the Moving Parties argued to the Committee that they were entitled to file their Motion for Declaratory Ruling and commence this proceeding under the Committee's rules providing that any "person" may seek a declaratory ruling. Site 203.01(a). The Committee agreed with the Moving Parties on this issue (and did not agree with PSNH's objection based on lack of standing). Having availed themselves of this rule to qualify as "persons" enabling them to bring their Motion for Declaratory Ruling, PSNH believes it is fundamentally unfair that the Moving Parties should now be permitted to argue to the Committee that the obligation to pay the legal fees of the Committee's legal counsel only applies to an "applicant", and not to them. If the Moving Parties qualify as "persons" entitled to bring their Motion (as the Committee has ruled they do), then those same "persons" should be responsible for the Committee's legal fees for legal counsel employed by the Committee to address that Motion.

The statute defines "person" very broadly, to include, among others, any group, firm, partnership, corporation or other organization. RSA 162-H:2, IX. The statutory definition is far broader than the regulatory definition of "applicant" under Site 102.03 upon which the Moving Parties rely. This broad definition of "person" not only encompasses and subsumes the regulatory definition of "applicant," but it clearly covers the Moving Parties, and governs over the regulatory definition. The Moving Parties initiated this proceeding, not PSNH, and as such,

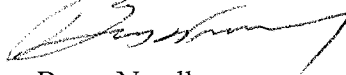
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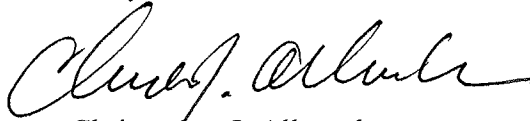
it is their responsibility to pay the fees. Certainly, under no set of circumstances in a proceeding like this is there authority, or even a common sense justification, to assess fees against a party like PSNH.

The Moving Parties' effort to shift the responsibility for legal fees to PSNH demonstrates that this is part of a broader effort on their part to avoid the burdens they must, as a matter of law, bear in this matter. As the parties seeking the declaratory ruling here, it is their burden to prove their assertions by a preponderance of the evidence. Site 202.19(a). In the evidentiary hearing, the Moving Parties must present their evidence first. Site 202.20. There is no legal basis for the Moving Parties to simply make allegations and then expect PSNH to disprove their assertions. Nor is there any basis for them to expect PSNH to furnish the witnesses they think they may need to meet their burden under the law. Given that most of the Moving Parties have a long history of dealing with these issues in multiple other forums, there can be no question that they already have access to the information they need to try making their case (and in fact, they must have possessed such information to support their good faith basis for initiating this action). If the Moving Parties cannot meet the burdens imposed on them by law, their Motion for Declaratory Ruling must be dismissed.

Sincerely,



Barry Needleman



Christopher J. Allwarden

Senior Counsel

Public Service Company of New Hampshire

BN:cb

cc: Michael J. Iacopino, Esq.
Douglas L. Patch, Esq.